

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL NOTE

HB 309 - SB 1072

February 19, 2023

SUMMARY OF BILL: Removes objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing marijuana, marijuana concentrates, or marijuana oil into the human body from the definition of drug paraphernalia. Establishes a “marijuana accessory” as paraphernalia for the ingestion, use, inhalation, preparation for personal use, or storage of a personal-use quantity of marijuana. Establishes “personal-use quantity” of marijuana as: 1) one ounce or less of marijuana; (2) five grams or less of resin extracted from or of concentrates derived from, marijuana; and (3) infused products containing 1,000 milligrams or less of delta-9-tetrahydrocannabinol (THC).

Makes a person who knowingly possesses a personal-use quantity of marijuana or marijuana accessory, as defined in the legislation, a civil violation and such person shall not be arrested or criminally prosecuted solely for such a violation. Establishes the penalties for such a violation as follows: 1) if the offender is 18 years of age or older, then the penalty is a \$25.00 fine or three hours of community service if the offender so chooses, and; (2) if the offender is younger 18 years of age, then the offender shall be required to perform community service in an amount not to exceed five hours, or complete a drug awareness program within one year of the violation at no cost to the offender, or both. Requires a parent or legal custodian of a minor offender to be notified of the violation.

Prohibits a person’s bail, parole, probation, or suspended sentence from being revoked based solely on the detection of marijuana metabolites, including by means of a positive confirmatory urine drug test. Prohibits a governmental entity acting in its capacity as a public employer from taking adverse action against an employee based solely on the detection of marijuana metabolites, including by a positive confirmatory urine drug test. Establishes that a person shall not be required to receive a referral to a treatment resource or be prohibited from receiving public assistance, including assistance provided by the Supplemental Nutrition Assistance Program (SNAP), the Temporary Assistance for Needy Families (TANF) program, or Medicaid (TennCare), based solely on the detection of marijuana metabolites, including by a positive confirmatory urine drug test.

Increases the minimum quantity of marijuana necessary to qualify as a Class E felony from not less than one half ounce to more than one ounce. Increases the quantity of marijuana an offender can be convicted of selling to remain a Class A misdemeanor offense of casual exchange from one half ounce to one ounce.

FISCAL IMPACT:

Increase State Expenditures – \$100,000/FY23-24

\$30,000/FY24-25 and Subsequent Years

Decrease State Expenditures – \$142,100/FY23-24 Incarceration

\$143,500/FY24-25 Incarceration

\$144,900/FY25-26 Incarceration

Decrease Local Expenditures – \$14,931,700/FY23-24 and Subsequent Years

Assumptions:

- The proposed legislation removes selling any amount of marijuana less than one ounce from a Class A misdemeanor offense and classifies possession of one ounce or less as a “personal-use quantity”, punishable only by a fine, community service, or completion of a drug awareness program.
- It is not known exactly how many Class A misdemeanor offenses occur each year due to casual exchange of a half-ounce or less of marijuana. Based on conviction data for the relevant statute that includes other offenses, it is assumed that there is a statewide annual average of 17,101 convictions. The proposed legislation will eliminate these convictions.
- A person convicted of a Class A misdemeanor offense will, on average, serve 15 days in jail.
- Based on cost estimates provided by local government entities throughout the state and reported bed capacity within such facilities, the weighted average cost per day to house an inmate in a local jail facility is \$58.21.
- Therefore, the decrease in local expenditures related to incarceration is estimated to be \$14,931,738 (17,101 convictions x 15 days x \$58.21) in FY23-24 and subsequent years.
- Based on the Fiscal Review Committee’s 2008 study and the Administrative Office of the Courts’ 2012 study on collection of court costs, fees, and fines, collection in criminal cases is minimal due to defendants often not being able to pay them; therefore, any decrease in local revenue related to fines from the reduced convictions and any increase in local revenue related to the new \$25 fine for personal-use possession are estimated to be not significant.
- Based upon information provided by the Department of Correction (DOC), there has been an average of 137.8 admissions per year over the last 10 years for the Class E felony offense under Tenn. Code Ann. § 39-17-417(g) for the sale, manufacture, delivery of, and possession with intent to sell, manufacture, or deliver a Schedule VI controlled substance classified as marijuana containing not less than one half ounce nor more than ten pounds, or a Schedule VI controlled substance defined as a non-leafy, resinous material containing tetrahydrocannabinol (hashish), containing not more than two pounds of hashish.
- However, these admissions include a Schedule VI controlled substance classified as marijuana containing up to ten pounds and a Schedule VI controlled substance classified as hashish containing up to two pounds.

- It is assumed that 15 percent, or 20.67 (137.8 x 15%) of these admissions involved between one half ounce and one ounce of a Schedule VI controlled substance classified as marijuana.
- After adjusting for pre-trial jail credits, the average time served for a Class E felony offense under 39-17-417(g) is 0.37 years.
- Based on population data from the U.S. Census Bureau, population growth in Tennessee averaged 0.96 percent per year (from 2018 to 2021).
- The proposed legislation will result in 20.67 admissions annually serving 0.37 less years incarcerated.
- The weighted average operational costs per inmate per day are estimated to be \$50.63 for inmates housed at state facilities and \$52.11 for inmates housed at local facilities.
- Pursuant to Public Chapter 1007 of 2022, cost decreases are to be estimated on the actual estimated costs to be reduced over the next three-year period; therefore, the decrease in incarceration costs is estimated to be the following over the next three-year period:

Decrease in State Expenditures	
Amount	Fiscal Year
\$ 142,100	FY23-24
\$ 143,500	FY24-25
\$ 144,900	FY25-26

- The estimated fiscal impact of the proposed legislation does not consider the availability of beds in state and local facilities, but is based solely on the current operating costs of state facilities and the reimbursement rates for local facilities as is required by Tenn. Code Ann. § 9-4-210.
- All calculations used in completion of this fiscal note are available upon request.
- The proposed legislation requires that participation in a drug awareness program must be made available free of charge to a person under the age of 18 who is convicted of possession of a personal-use quantity of marijuana.
- It is unclear what entity or organization would provide the programs or where the funding would come from.
- It is assumed that it would become the responsibility of the Department of Mental Health and Substance Abuse Services (DMHSAS).
- In order to support such programs, DMHSAS estimates that, based on experience with past modules and using existing providers, the department would require one-time funding of \$100,000 for development and an additional \$30,000 each year for maintenance and support.
- Therefore, the increase in state expenditures related to free drug awareness programs is estimated to be \$100,000 in FY23-24.
- The increase in state expenditures related to free drug awareness programs is estimated to be \$30,000 in FY24-25 and subsequent years.

- Based on information provided by DOC, there will not be a significant fiscal impact related to prohibiting revocation of a parolee or probationer's sentence based on a positive urine test for marijuana.
- Based on information provided by the Department of Human Services (DHS), prohibiting a person from being denied TANF or SNAP benefits based on a positive urine test for marijuana is not estimated to significantly impact the total number of recipients of those benefits. Any fiscal impact to DHS, those programs, or federal funding related to these provisions is estimated to be not significant.
- Based on information provided by TennCare, the proposed legislation will have no fiscal impact on any TennCare programs.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink that reads "Krista Lee Carsner". The signature is written in a cursive, flowing style.

Krista Lee Carsner, Executive Director

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